



ONTARIO
DEPARTMENT OF THE SECRETARY AND REGISTRAR

R E P O R T

of the

C O M M I S S I O N

TO MAKE INQUIRIES AND REPORT UPON ALL MATTERS
AND THINGS CONNECTED WITH OR RELATIVE OR
INCIDENTAL TO THE SEIZURE ON OR ABOUT THE 21ST
OF APRIL, 1920, OF A CAR OF WHISKEY AT THE
CITY OF CHATHAM, ETC., ETC., ETC.


===== PRESENTED TO THE LEGISLATIVE ASSEMBLY =====

BY COMMAND

H.C. Ruxton.

PROVINCIAL SECRETARY.

*Seasoned for
NO*



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To His Honour,

Lionel Herbert Clarke, Esquire Lieutenant Governor of the
Province of Ontario-

May it please your Honour:-

Having received your Honour's Commission issued pursuant to the provisions of the Public Inquiries Act directing me to make inquiries and report upon all matters and things connected with or relative or incidental to the seizure on or about the 21st. of April, 1920, of a car of whiskey at the City of Chatham in the County of Kent by the License Inspector and the High Constable of the said County, the disposition of the liquor contained in such car, the methods employed for guarding it while under seizure and the truth or otherwise of charges of misconduct of the said License Inspector and the said High Constable or any other person or persons with respect to the contents: and also to inquire and report upon all matters and things relative to the seizure on or about the 21st. day of April 1920, of five large cases consigned at Montreal to one M. Gordon of Tilbury, the disposition of the liquor contained in such cases, the method employed for guarding it while under seizure and the conduct of the said License Inspector or any other person with respect to the seizure, guarding and disposition of the said liquors or of any other liquors: and also to inquire into and report upon all matters relative to the seizure, care and disposition of several club bags and suit cases containing liquors in or about the month of October, 1919, by the said High Constable, I caused the following notice to be published in the Chatham Planet and Chatham Daily News on the 22nd. day of June, 1920

-- NOTICE --

" By Commission issued by His Honour the Lieutenant-Governor of Ontario under The Public Inquiries Act, the undersigned has been appointed to inquire into investigate and report upon all matters and things connected with or relative to the seizure on

or about the 23rd of April, 1920, of a car of whiskey at the City of Chatham, in the County of Kent, by the License Inspector and High Constable of the said County, the disposition of the liquor contained in such car, the methods employed for guarding it while under seizure and the truth or otherwise of charges of misconduct of the said License Inspector and the said High Constable or any other person or persons with respect to the contents of such car.

AND ALSO to inquire into and report upon all matters or things connected with or relative or incidental to the seizure on or about the 20th. of April, 1920, of 5 large cases of whiskey consigned at Montreal to one M. Gordon of Tilbury, the disposition of the liquor contained in such cases, the method employed for guarding it while under seizure and the conduct of License Inspector French or any other person or persons with respect to the seizure, guarding or disposition of the said liquor or any part thereof or of any other liquors:

AND ALSO to inquire into and report upon all matters and things connected with or relative or incidental to the seizure, care and disposition of several club bags and suit cases containing liquor, in or about the month of October, 1919, by the said High Constable Peters; with power of summoning any person and requiring him to give evidence on oath.

SUCH inquiry will be held in the Council Chamber in Harrison Hall, in the said City of Chatham, on TUESDAY, the 29th. day of JUNE, 1920, commencing at 9 o'clock in the forenoon. Any person able to give information in connection with any of the matters above mentioned or wishing to prefer any charge or to make any complaint touching the same is requested to communicate with the undersigned on or before the 28th day of June, instant, giving particulars of any such information, charge or complaint, together with the name of any person or persons capable of giving evidence in connection with the said matters, or any of them. Such communication may be addressed to the undersigned at the Court House, in the City of London, or mailed or left for him with J.



Holmes, Esquire, Clerk of the County Court of the County of Kent,
at Harrison Hall in the said City of Chatham.

Dated this fifteenth day of June, 1920.

TALBOT MACBETH,

Commissioner. "

No information or other communication was received in
response to this advertisement ^{except} an anonymous letter which proved
to be of no value.

On the 29th day of June, 1920, I opened my inquiries at
Harrison Hall in the City of Chatham, and the same were continued
on the following day, there being in attendance Mr. J. C. Elliott,
for the Department of the Provincial Secretary, and Mr. H. D. Smith,
County Crown Attorney, Mr. J. M. Pike, K. C. for License Inspector
French and County Constable McGregor, ~~and~~ Mr. R. L. Bracklin
for High Constable Peters, and Mr. Stewart for B. K. Harper.

Seventeen witnesses were called by Mr. Elliott and
examined and cross-examined; their evidence was taken down in
shorthand by Miss Nonah E. Dobson, Court Stenographer, whom I
engaged for that purpose, and such evidence has since been
extended by her and is submitted with this report. I have also
attached the exhibits referred to in the evidence.

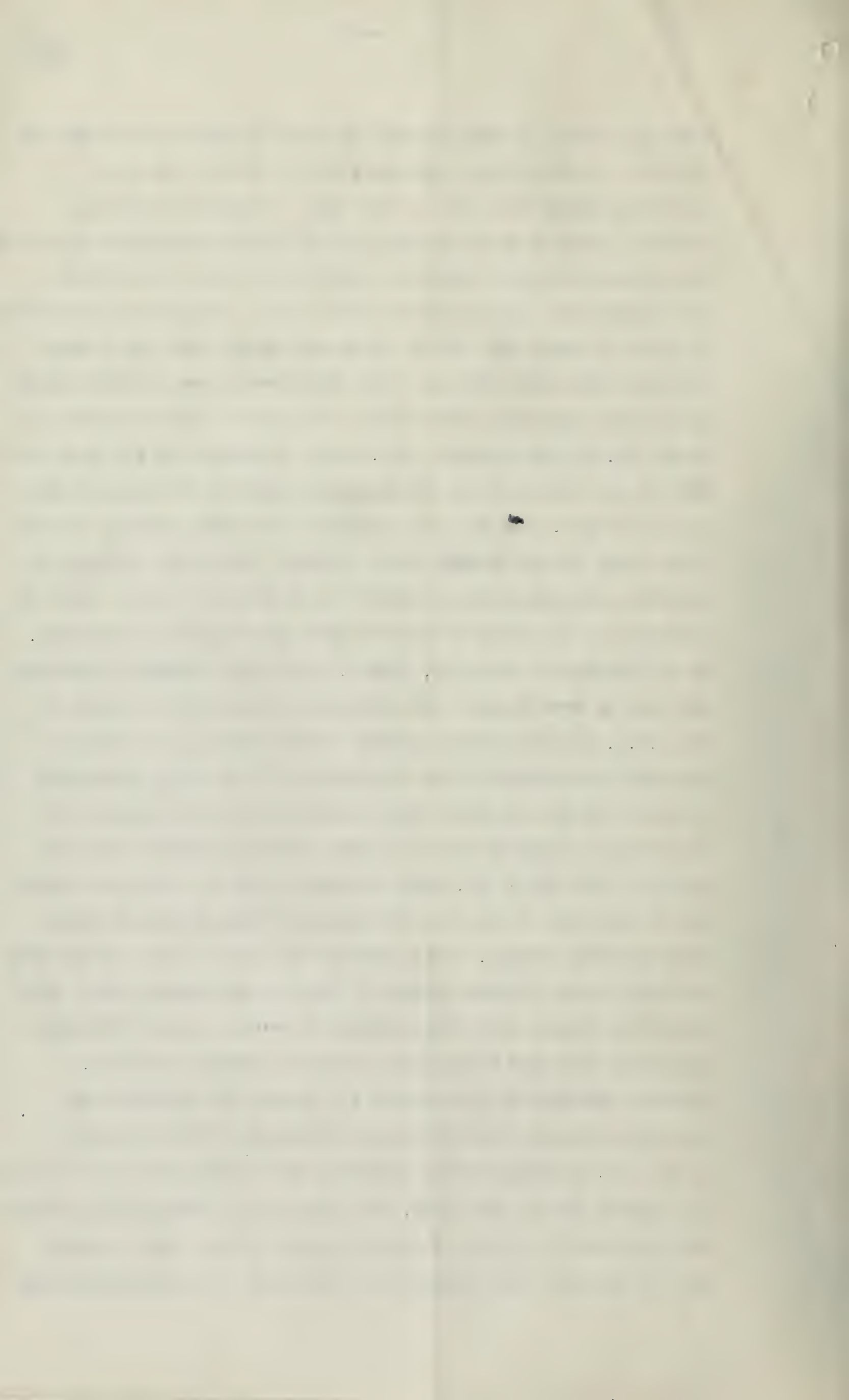
On the 30th day of June, 1920, there being no witnesses
then in attendance, I adjourned the inquiries sine die, in the hope
that some further evidence might be obtained, but I have since been
informed by Mr. Elliott and by the County Crown Attorney that they
have not been able to find any other persons who have or should
have any knowledge of the subject matters of my inquiries, and as
I have not been myself able to learn of any other available
evidence, I now beg leave to make my report as follows:

As to the first matter, I find that on the 17th day of
April, 1920, an ordinary freight car was shipped over the Canadian
Pacific Railway from Montreal to Sam Kovinsky a junk dealer in

Chatham. In the local freight way bill which is produced, the Brooks Metal Company is named as Consignor, the name being fictitious, as I am informed, and the contents of the car are described as brass skimmings; they consisted of 58 barrels, each containing about 75 bottles of whiskey packed in cinders and covered with canvass sacking. The doors of this car were sealed in Montreal with the usual railway seals. The car arrived in Chatham at 10.50 A.M. in the mixed train leaving London at 7.50 A.M., and in accordance with the usual practice the freight cars of this train on its arrival in Chatham were left on what is called the Pere Marquette transfer track, or "Y", some distance East of the Station. On the afternoon of the same day Alex. McDougall, a C.P.R. car checker, whose duty it is to take a record of cars and seal numbers, examined the cars on the "Y" and found that the seal of the North door of the car in question had been broken: the metal strap had been "broken on the end, and shoved back into the slot" so that it would not appear to be broken. McDougall opened the door and lookingⁱⁿ saw that some of the barrels had been opened, saw cinders and some bottles on the floor: he closed the door, resealed it and report^{ed} to Robert Scott, C.P.R. agent at Chatham, about 4 P.M. Sylvester Pitt, Conductor of the train in which this car was brought to Chatham, thought the seals were intact when the car was put on the "Y", but he did not make sufficient examination to discover the broken seal described by McDougall; and there is nothing to show whether this seal was broken before or after the car arrived in Chatham.

In accordance with the usual practice of the Railway Company, the car in question, with other cars containing merchandise to be unloaded in Chatham, was moved in the course of the afternoon, under the direction of the yardmaster, to the team track, or track number four, at the West end of the Chatham yard, and Mr. Scott found it there about two hours after he received McDougall's report. He found the seals then intact, and he secured

each door with a strong padlock, of which he kept the keys, and he says that no person had duplicate keys. The car was not disturbed during the night of the 22nd. Mr. Scott found his padlocks intact when he visited the car about 8.30 A.M. on the 23rd, accompanied by Miles Glassford, shipping foreman of the C.P.R. They entered the car to see what was in it: they found 58 barrels: of these Mr. Scott says six or seven were empty, and six or seven uncovered and partly empty: the others were tied up with canvass on top and apparently untouched at that time - This of course is merely Mr. Scott's estimate - Mr. Scott re-locked the car door and ^{went} sent to the office of Sam Kovinsky, the apparent consignee, to tell him of the car. Kovinsky was called as a witness; he said that he never heard of the Brookes Metal Company, nor bought anything in Montreal, and had nothing whatever to do with the car in question; and there is no reason to suppose that his evidence is not true. On the morning of April 23, Thos H. French, the License Inspector, was told by Fred Lucas, a policeman, that a car load of liquor on the C.P.R. had been broken opened - French went to the County Attorney for advice and was instructed to take every precaution to guard the car: he asked High Constable Peters to assist him and obtained a search warrant - Then French and Peters went in search of the car - Mr. Scott pointed it out to them, and opened one of the doors - and they went inside - French said he would seize the car, and Mr. Scott gave him the keys - They did not stay more than about fifteen minutes - The car was locked again, and Peters and French went away, agreeing to return in the afternoon, and French sent off a telegram (produced, Exhibit 4) to Mr. Flavelle advising of the seizure and asking for instructions. About two o'clock in the afternoon French and Peters returned to the car: it had not been disturbed since they left it at 11 A.M. they opened one of the doors, and proceeded to examine the contents. They selected one barrel which apparently had not been tampered with, turned out the contents and found that it contained seventy



five bottles of whiskey. No further effort was made to ascertain how much was then in the car, though they examined all of it, but admittedly only for the purpose of learning how many different brands there were. This examination lasted for about two hours; it was made under the eyes of a considerable number of curious or interested spectators, some of whom were allowed to enter the car. French cannot say how many men were in the car that afternoon: he claimed credit for stopping one man who was carrying away whiskey, and taking it from him, and does not think that any was stolen during the afternoon. No attempt was made to count the full barrels or the empty barrels: or to find out how much was left in the barrel which appeared to be partly emptied. Even the bottles of whiskey which were scattered about the floor of the car were not gathered up or counted.

French admits that he had positive instructions from the Department to ascertain correctly the quantities of liquors at any time seized by him: (See exhibits numbered 5, 6 and 7.) He did not make the slightest attempt to obey his instructions, and his disobedience is in my opinion inexcusable.

About 4.45 French received a telegram signed J.D. Flavell, (exhibit 8) directing him to send the whiskey by express to the Ontario Government Dispensaries, and in the meantime to employ one or more trustworthy men " to guard it sure "- French then went to Benjamin K. Harper, the agent at Chatham for the Dominion Express Company: Harper engaged a taxicab and went with French to look at the car containing the whiskey: they found Peters in the act of locking the door. Harper told French the whiskey would have to be transferred to an express car, and apparently it was then understood or arranged that this would be done, and French and Harper went off, leaving Peters at the car. Peters told French that he would need help, and French promised to send assistance.

From this point I follow the statement of Peters who was

a candid and in my judgment a truthful witness.-

About 6 P.M. while Peters at the North door of the car was eating some food which he had sent for, some one shouted to him that the South door was broken open. Peters ran round the car, saw 25 men or more there, the lock broken, and the door partly open; he drove them from the door, and guarded it as best he could. He sent a taxicab to French's house, but the driver reported that there was no one there; he then sent the man to telephone for French, but without result. Then Peters asked some railway man to have the car moved up to the express office; it seemed that Mr. Scott had left orders that the car was to be moved if those in charge wished it. In the meantime Fred. Lucas arrived on the scene; he says at about 7.30 P.M. This man was then a member of the Chatham Police Force, but he had sent in his resignation, and was on the point of leaving and did leave the Force within a few days. Some woman had telephoned to Mr. Groves, the Chief of Police, that whiskey was being stolen from a car, and he sent Lucas to see what was going on. Shortly after the arrival of Lucas the yard engine came to move the car; it was then growing dark and Peters says the crowd was greater than ever: when the string of cars was moved out of the siding, the crowd followed "on foot or in automobiles", or hanging on to the sides of the cars. Lucas was on the top of the whiskey car, Peters was on the next car. The shunting took some time: at one point the whiskey car was stationary for 20 or 30 minutes, but at last it was placed on a siding near the water tower about 50 yards East of the Dominion Express Company's office which adjoins the C.P.R. passenger station. Then Peters found that the lock on the North door of the car had also been broken off. He asked an old country ~~Constable~~ ^{and} Constable named McGregor to help him, ^{and} telling Harper, the Express Agent, to watch the car, went into the Express Office to telephone for assistance. While he was at the telephone Harper called "Come here they will take it all". Peters ran

out, the car door was open, and a mass of people in front of it, reaching into the car and climbing into it. He drove them away as well as he could, but he admits quite candidly that quantities of the whiskey were stolen. Lucas was still in the vicinity of the car: he gave evidence before me: his evidence was extremely unsatisfactory: he says he stayed about the car until 10 P.M. but he saw nothing and did nothing. Peters was evidently suspicious of him (Q. 1587) and said (Q.1588) that Lucas did nothing to help him. Subsequently Peters employed Johnston McKinley, a railway constable, who procured two strong locks and secured the car doors, and Peters left McKinley and McGregor both armed, one at each door, to guard the car for the night, and went to his bed at about 11 P.M.

McKinley and McGregor say that no further attempt was made upon the car during the night, and the doors were not opened until the transfer of the whiskey to an express car was commenced on the following morning: But I accept the evidence of Peters who says that when he returned to the car at 6 A.M. on the 24th. he found McKinley standing by the North door which was locked. At the other side of the car he found McGregor, who was tipsy, the car door was wide open, and a man stood in the doorway. Peters said this man had been prosecuted before for stealing whiskey; he did not remember his name. The man jumped down and went away. Peters then remained in charge of the whiskey car. About half past seven o'clock, a car of the Dominion Express Company was placed on the next siding opposite to the other car, and the whiskey was transferred to the Express car by employees of the Express Company, by means of a gang-way placed between the cars. While the transfer was in progress a number of men kept trying to force their way in between the cars, and to get at the whiskey: they were kept back with difficulty by a railway constable as well as by the policeman

Lucas who was again in attendance. There is no evidence that any whiskey was stolen during the transshipment, though no attempt appears to have been made to arrest any of these disorderly persons or drive them from the railway premises, and none of them could be identified by any of the witnesses.

Inspector French gave rather a vague account of his conduct on the evening of the 23rd. He says that he went home to tea about 5.30 P.M. and went out again at 7.30 P.M. to look for Peters, and several witnesses say they saw him at the Station about that time, but Mr. French declares that he was unable to find Peters or the seized car, so he went home to bed. He did not try to get assistance for Peters, or take any further steps to safeguard the whiskey. Under these circumstances it is not surprising that Mr. French was suspected of getting drunk on the afternoon of the 23rd., but this he positively denies and I accept his denial, as those who saw him testify that he was sober.

When Mr. French returned to the C.P.R. Station he found the transfer of the whiskey to the Express car was going on. When the transfer was completed, the express car was securely fastened, and it was attached to the train leaving Chatham at 11.18 A.M. Mr. French went with it to Toronto, and turned it over to Mr. Dingman. On Monday, April 24th, George Snider obtained the key of the car from the Dominion Express Company and transferred the contents to the Ontario Government Dispensaries, where they were examined and checked. Mr. Snider says that he obtained from the car 58 barrels of which 15 were in good order and 43 in bad order, some of them empty or partly empty. The barrels in good order contained ^{Each} from 75 to 84 bottles of whiskey—and there were in all 2326 bottles of whiskey. There is no reason to suspect that any whiskey was stolen after it was placed in the express car. It is reasonable inference that each

of the 58 barrels shipped from Montreal contained at least 75 bottles, and if Mr. Scott's estimate that three-fourths of these barrels had not been broken into when Inspector French undertook to seize the shipment, there must have been then in the car about 3300 bottles in addition to what was scattered about the car or in the barrels which were partly emptied- and it is my belief that more than 1000 bottles were carried off between 2 P.M. on the 23rd. and 6 A.M. on the 24th.

It may be assumed that those who procured the shipment of the car load of whiskey to Chatham, intended to carry off the contents while the car stood in Chatham, and it is probable that a considerable number of men were in Chatham for that purpose on the 23rd. and 24th. April, and that they broke into the car and carried off quantities of whiskey, as described by Peters. This may explain to some extent the singular circumstance that Peters and other witnesses who spoke of the crowds about the car declare that they could not identify a single person in the crowds. But it appears that some of the looting was by men who were not strangers in Chatham. B.K. Harper, agent for the Dominion Express Company, (who has already been mentioned) says that on April 25th. he found in the Express room a sack containing bottles of whiskey: so much he was obliged to admit for he carried the bottles to his home where they were subsequently seized, but he " could not recollect " that he saw any other whiskey in the Express room (Q.2140 (51): he could not say there was any other whiskey there (Q.2147): he saw bags there, but did not know what was in them (Q.2181) R.G. Dunlop, an employee of the Express Company saw in the Express room on the afternoon of the 24th. a number of sacks, eight or nine, like potato sacks about half full. He did not examine them, does not know what was in them, and cannot say when or by whom they were brought there or taken away.

I am satisfied that Harper and Dunlop were aware

that many bottles of the stolen whiskey had been concealed in the Express room.

A day or two afterwards Lucas, the ex-policeman, went to Harper at the Express office, and asked for some whiskey which he said was in the Express room. Harper said he had no whiskey for him, and Lucas then used filthy language which the witness repeated to me, but not in the hearing of my stenographer. It was quite plain that Lucas claimed as his share of the plunder some of the stolen whiskey which had been stowed away in the Express room. When the Provincial officers went to Harper's house in quest of stolen whiskey, he at first denied all knowledge of any whiskey except what had been shipped to Toronto, but subsequently produced nine bottles, which had undoubtedly been taken from the seized car. I am told that Harper was subsequently prosecuted and paid a fine of \$500.

On Tuesday, April 26th. after Inspector French returned from Toronto, Harper informed him by telephone that some parties had left sacks containing liquor in the storeroom behind the express office. French says he told Harper to "hold on to it until we saw what the outcome was", but he admits that he took no action whatever upon Harper's information. He did not then know that Provincial officers were coming to Chatham to investigate, and when they arrived he did not tell them what he had heard about whiskey in the Express room though he must have believed that it came out of the car which he had seized. Excepting the nine bottles taken from Harper, none of the stolen whiskey has been recovered.

I have now summarized the facts so far as disclosed by the evidence adduced regarding the seizure of the car of whiskey in question, the disposition of the whiskey contained in the car, and the methods adopted for safeguarding it while under seizure. The result of my enquiry is far from

satisfactory, but I do not think that on these points any further evidence of any value could be obtained.

No charges of misconduct were formulated in terms before me against Inspector French or High Constable- *Peters* but it is right that I should say what I think of their conduct in this unfortunate business.

I do not wish to speak harshly of Inspector French. I understand that he has been dismissed. He is an old man, much too old and quite unfitted for the position which he held. It appears that he was at one time charged with helping himself to some of the whiskey seized. This I think is disproved, and there seems also to have been a suspicion that he connived to some extent in the plundering of the car, and to this suspicion some colour was lent not only by his action on April 23rd. but also by his omission to act on the information which he received on the 26th. But I do not think he should be convicted of anything worse than fatuous imbecility and utter disregard of his instructions.

High Constable Peters is Inspector for the County of Kent under the Ontario Temperance Act, having been appointed by the County Council under Section 120 of that Act, but he is not even a Peace officer for the City of Chatham. I give him credit for an honest desire to guard the car effectively, but he failed to do so, and for this failure I think he should be responsible. In my opinion he should not have undertaken the task. He is a man of some experience, and he must have known that the services which Mr. French asked of him should have been rendered by the City Police: and he made a grave error in that he did not apply to Mr. Groves, the Chief of Police, for protection when the car was broken open about 6 P.M. on the 23rd. April. There was possibly some friction between Peters and the City Police, for Peters says that the Chief had forbidden him to give orders

to City Policemen, but while this may be some reason why Peters should not have undertaken police work in Chatham, it should not excuse him for not asking the Chief to take charge of the car, as soon as it was apparent that Peters himself was unable to protect it. If Peters had sent a messenger to inform Mr. Groves of the state of affairs I do not doubt that adequate measures would have been taken to guard the car, and there would have been no further looting of whiskey.

With regard to the second matter referred to me for enquiry, I have only the evidence of Mr. French, the License Inspector. His statement is to the following effect:

On the 21st. April, 1920, in consequence of information received from Mr. Scott, the C.P.R. Station Master, Mr. French went to the C.P.R. Warehouse, in Chatham, and there found five large packing cases which had been billed as "Farmers Supplies" and consigned to one Gordon at Tilbury: all of them had been broken open, four of them were empty, in the fifth were four unopened cases of whiskey. It was explained that the Railway Officials finding these broken cases in a freight car at Chatham, transferred them to the warehouse. Mr. French caused the four cases of whiskey to be carried to a room in the first floor of the Scane Block which he then used as his office. I am informed that the Scane Block is a large office building in which there are a number of tenants. One of these tenants, a lady who does a "pressing business" occupied a room near Mr. French, and as her room door had a Yale lock, Mr. French with her permission placed the four cases of whiskey under a table in her room, and they remained there in safety until the morning of the 24th. when Mr. French, being about to proceed to Toronto with other whiskey as already narrated, thought he would take those four cases also. He says he asked a messenger of the Dominion Express Co. to call

at his office and take them to the railway station, and he left them in the hallway beside the door of the lady's room, and near the stairway leading to the street. The lady promised to keep an eye on them, and Mr. French went off to the Station ~~to~~ to take the train for Toronto.

It is not very clear whether he then supposed that the four cases had been put in the Express car, or whether he forgot to enquire for them at the Station, but on his return from Toronto he enquired at the Express office, and was told that on the morning of the 24th. the Messenger went to Mr. French's old address in Harrison Hall, but found neither the office nor the whiskey- and the lady in the Seane Block said that shortly after Mr. French's departure a man came up the stairs and carried off the whiskey: she supposed he was the express messenger. Of course nothing more has been heard of the four cases.

I do not think that Mr. French's conduct in this matter calls for any comment, the facts speak for themselves, Exhibits Nos. 14 and 15 are letters from Mr. French to the Board of License Commissioners, one of April 21st. announcing the seizure of the four cases, the other of April 27th. announcing their loss: they agree substantially with the statement made to me by Mr. French and I have no evidence of any other seizure of liquor made by him.

The third subject matter for enquiry relates to High Constable Peters. It seems that in October, 1919, Peters learned that a number of suit cases containing liquor had been put off a train at Thamesville, and carried away in an automobile. Peters went in pursuit and after a long chase found the automobile in a garage in Chatham owned by J.H. Tyrell; in the automobile were 15 or 20 suit cases containing flasks or pint bottles of whiskey: many of the bottles were broken. Peters thinks each suit case contained about 10 unbroken pints, but this is merely an estimate: he did not count them or keep any sort of record

showing how much he seized. J.H. Tyrell was prosecuted and acquitted: a warrant was issued for his son Rodney Tyrell who fled the country. Peters had offices in Harrison Hall consisting of 2 rooms, one opening out of the other, and formerly occupied by the Local Master in Chancery. In the outer office is a large vault in which are many papers relating to proceedings in the Master's office. In this vault Peters deposited the suit cases and the whiskey: about a month afterwards he found that the whiskey had been taken from the vault, and he cannot tell what became of it. He was not much surprised to find the whiskey gone, because he had missed other liquor from his office. He was aware that many persons knew the combination of the lock on the vault door, and many persons knew that the whiskey had been placed in the vault. He put it there, he says, because he had no other place in which to keep it. Mr. Smith, the County Crown Attorney, advised Peters to have the combination of the lock changed: unfortunately this was not done until after the whiskey disappeared. After the combination was changed other liquor was safely kept in the vault. Peters did not report to the Board of License Commissioners the seizure or the loss of the whiskey, nor did he inform Mr. French, the License Inspector. He says he then had no instructions either to report seizure of liquor or to forward seized liquor to the Ontario Dispensaries, and he thought it his duty to keep it to be used as evidence against Rodney Tyrell whom he expected to arrest.

The foregoing is a summary of the evidence of Peters who was the only witness on this branch of the enquiry, and on his own evidence I must find him guilty of gross negligence, but I cannot find that he in anyway connived at the theft of the whiskey.

I have now dealt with the different matters referred



to me, so far as I have been able to do so upon the evidence adduced, and I regret to say that the result of my enquiries is far from satisfactory, but there does not seem to be any reason to suppose that any further enquiry would lead to any better result.

I beg leave to remain

Your Honour's obedient servant,

Talbot Magelth
Commissioner

London
January 24th 1921

Investigation under Commission
of enquiry at Chatham,
June 29 30- 1920.

REPORT of Judge Macbeth.
